

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NEWPORT YACHT CLUB, a Washington nonprofit corporation, individually and on behalf of its members; WILLIAM S. WEINSTEIN and LEANNE C. WEINSTEIN, and their marital community,

**Plaintiffs.**

v

THE CITY OF BELLEVUE, a  
Washington municipal corporation,

Defendant

NO. C09-0589 MJP

PRETRIAL ORDER

(PROPOSED)

## JURISDICTION

This Court has ancillary jurisdiction to enforce the Settlement Agreement in Cause No. C03-2534Z, which the Court retained in entering the order approving the Settlement Agreement and dismissing Cause No. C03-2534Z with prejudice.

## CLAIMS AND DEFENSES

The plaintiffs Newport Yacht Club and the Weinsteins intend to pursue the following claims for relief at trial against the defendant City of Bellevue (“Bellevue”):

a. Entry of an injunction requiring Bellevue to honor its obligations under the terms of the Settlement Agreement relating to the construction of a salmon habitat enhancement project.

b. An award of the money damages they have suffered as a result of Bellevue's failure to honor its obligations under the terms of the Settlement Agreement.

c. Entry of an injunction requiring Bellevue to cooperate in providing necessary permits to the Weinsteins.

d. An award of money damages suffered by the Weinsteins as a result of Bellevue's wrongful acts in thwarting or delaying issuance of necessary permits to the Weinsteins.

e. In the alternative to injunctive and monetary relief, rescission of the Settlement Agreement.

f. An award of their costs and attorneys' fees incurred in pursuing this action, as provided in Section 16 of the Settlement Agreement.

g. Such other relief as the Court may deem just, equitable and proper.

1 Plaintiffs object to Bellevue's attempt to assert in this Pretrial Order  
2 affirmative defenses of failure to exhaust administrative remedies, and lack of  
3 standing by the NYC because Bellevue waived these defenses by not asserting  
4 them in Bellevue's answer to the Amended Complaint. (Dkt. #57). In addition,  
5 these defenses are inconsistent with rulings previously made by the Court.  
6

7 Defendant The City of Bellevue ("the City") expects to show at trial  
8 that the things Plaintiffs Weinstein ("Weinstein") now contend are a "salmon habit  
9 enhancement project" that the City failed to cooperate in the permitting of are, as  
10 Weinstein alleged in their Complaint in this matter, a salmon hatchery, which is  
11 not permitted in the residential zone under the Bellevue City Code, not salmon  
12 habitat enhancement. Additionally, those improvements were built in violation of  
13 the permits that were issued to permit Weinstein to build a massive house on a lot  
14 that he knew was more than 90% Class A wetland, wetland and riparian buffer  
15 and structure setback, again in violation of City of Bellevue code, and under the  
16 Settlement Agreement the City had no obligation to permit him to construct or  
17 maintain those facilities on 75 Skagit Key. The City also intends to pursue the  
18 following affirmative defenses and claims for relief at trial:  
19

20 a. To the extent Plaintiff Weinstein has any claims related to  
21 their house or that they were improperly denied final inspection of their house  
22 until they complied with the conditions of their building permit, those claims are  
23 barred by their failure to exhaust remedies required by Washington state law.  
24  
25  
26

b. The Newport Yacht Club (NYC) lacks standing to pursue any remaining claims in this matter, as the Amended Complaint alleged only that the Weinsteins were entitled to relief related to paragraphs 7.2 and 7.4 of the Settlement Agreement and the NYC is not the real party in interest as to those claims.

c. The City of Bellevue should recover its costs and attorneys' fees in this proceeding.

## ADMITTED FACTS

The parties agree that the Settlement Agreement was entered into in 2004 in the form reflected in Exhibit 1.

## DISPUTED FACTS

Plaintiffs contend as follows:

a. Coal Creek is a stream that descends from Cougar Mountain into Coal Creek Park and then through the Newport Shores community into Lake Washington. Coal Creek sustained significant salmon runs until those runs were depleted by runoff from mining and development.

b. The Newport Yacht Club and the Weinsteins own property and navigable waterways adjacent to the mouth of Coal Creek. The Newport Yacht Club is comprised of the residents of the Newport Shores community, through which Coal Creek flows. Plaintiffs' properties have been adversely impacted for many years by the buildup of coal tailings and other sediments at the

1 mouth of Coal Creek, in the navigable waters adjacent to the mouth of the creek,  
2 and in the Newport Yacht Club's marina. The coal tailings and other sediments  
3 also have effectively prevented any significant restoration of salmon runs in Coal  
4 Creek.  
5

6 c. Plaintiffs brought an action in this Court in 2003 to address  
7 their concerns regarding the management of Coal Creek, including claims under  
8 the Clean Water Act and other federal statutes.  
9

10 d. The parties to the 2003 action entered into a Settlement  
11 Agreement. That agreement was intended to resolve issues related to excess  
12 sedimentation, pollution and salmon habitat impairment in Coal Creek.  
13

14 e. Salmon enhancement was one of the central goals of both the  
15 Newport Yacht Club and the Weinsteins in the Settlement Agreement. To assure  
16 that Bellevue would not impede salmon enhancement, plaintiffs required Bellevue  
17 to agree not to oppose such projects, and to cooperate in the permitting for such  
18 projects, which were to be funded solely by private community members.  
19

20 f. In 2008, on behalf of and for the community including the  
21 Newport Yacht Club, the Weinsteins constructed a salmon habitat enhancement  
22 project on their property. Bellevue withheld permitting and instead directed the  
23 Weinsteins to obtain an "equivalency" report to show that what they had built  
24 was environmentally equivalent to what Bellevue contended it had approved.  
25  
26 The Weinsteins did obtain such a report but Bellevue rejected it and demanded

1 removal of the salmon habitat enhancement project in its then-present form.

2 g. Bellevue now opposes the rearing of salmon on the  
3 Weinsteins' property under any circumstances, refusing to honor its commitment  
4 to the Newport Yacht Club and to the Weinsteins in the Settlement Agreement.

5 h. Bellevue is in breach of contract in that: (i) it has opposed  
6 and/or failed to cooperate in the permitting of the salmon habitat enhancement  
7 project on the Weinsteins' property, despite the finding of environmental  
8 equivalency; and (ii) it opposes the rearing of salmon fry on the Weinsteins'  
9 property under any circumstances.

10  
11 The City contends as follows:

12 a. The Settlement Agreement fully and finally resolved any  
13 claims by Plaintiffs against the City regarding sedimentation or flooding of Coal  
14 Creek or their impact on salmon.

15 b. Weinstein has a long history of violating Bellevue City code  
16 (Code) on his property, forcing the City to take enforcement action against him,  
17 then claiming that his violation of the City code was for the purpose of enhancing  
18 habitat.

19 c. The Settlement Agreement allowed Weinstein to construct  
20 and maintain salmon habitat enhancements on his property, provided that any  
21 duty by the City to cooperate with him or to issue permits for his salmon habitat  
22 enhancements was expressly conditioned upon his proposal complying with City  
23  
24  
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26

1 code.

2                   d. Weinstein's property at 75 Skagit Key contains one of the few  
3 remaining Class A wetlands along Lake Washington. It is also bordered by Coal  
4 Creek. Bellevue City Code in effect between 2001 and mid-2006 imposed a 50-foot  
5 buffer from both the wetland and the creek, and a 25-foot structure setback  
6 beyond those buffers. More than 90 percent of 75 Skagit Key is protected wetland,  
7 wetland and riparian buffer and structure setback.

8                   e. Code provided for a "reasonable use exception" to avoid a  
9 regulatory taking, called a "Protected Area Development Exception" (PADE).  
10 Under a PADE the City can permit disturbance of up to 10% of a lot so that a  
11 house can be constructed on residential property, so long as the intrusion into the  
12 protected areas is the minimum necessary and adverse impacts to the protected  
13 areas are mitigated as set forth in the PADE. A house could be built on 75 Skagit  
14 Key only by obtaining and complying with a PADE. Construction of a house on  
15 75 Skagit Key thereafter limited the use and development of the property to  
16 compliance with the PADE.

17                   f. In 2001 the City of Bellevue issued a PADE to the then-owner  
18 of 75 Skagit Key, John Yonich, over Weinstein's objection. The PADE included  
19 13 conditions that were required if a house were built on 75 Skagit Key, designed  
20 to protect the hydrologic, water quality, vegetation community and wildlife  
21 habitat functions of both the wetland and riparian corridor and their respective  
22

1       setbacks and to limit the direct and edge effect impacts to the Type A wetland and  
2       Coal Creek riparian forest community.

3                   g.       Following the City's approval of the PADE, Weinstein  
4       purchased 75 Skagit Key. In 2006 Weinstein applied for a permit to build a house  
5       on 75 Skagit Key. He submitted plans to meet the conditions of the PADE, with a  
6       detailed plan to preserve the entire remainder of 75 Skagit Key as natural area and  
7       restore previously disturbed areas to become natural area, using a variety of  
8       native trees and shrubs. The City issued permits based on those plans.

9  
10                  h.       The City of Bellevue also approved plans for a flood control  
11       berm and salmon channel.

12                  i.       Thereafter Weinstein disturbed more than 6,000 square feet of  
13       75 Skagit Key more than was allowed under the PADE, including installing a fish  
14       hatchery in the area that was required to be a restored natural area, filling part of  
15       the Class A wetland itself, and installing an artificial ditch discharging water  
16       directly into Coal Creek that was meant to feed the wetland. What Weinstein built  
17       conflicted in multiple ways with the requirements of the PADE as well as other  
18       provisions of Code. A fish hatchery is not a permitted use in Bellevue's residential  
19       zone.

20  
21                  j.       The City instituted an enforcement proceeding to require  
22       Weinstein to bring 75 Skagit Key into compliance with the approved permits, the  
23       PADE and Code. In response, Weinstein and the NYC commenced this lawsuit.

8                   1.       The City has issued every permit Weinstein ever applied for  
9  
10                 that complied with Code and was salmon habitat enhancement. What he  
11                 requested that has not been approved was neither salmon habitat enhancement  
12                 nor in compliance the PADE, nor in compliance with Code.

## ISSUES OF LAW

17 Plaintiffs believe that the issues of law are as follows:

18                   a.        Whether Bellevue has the discretion to permit the rearing of  
19                   salmon fry on the Weinsteins' property under applicable law.

Defendant believes the issues of law are as follows:

22 a. Did what Weinstein constructed on 75 Skagit Key comply  
23 with the City Code?

25 b. Is any injunctive relief appropriate at this time, when there are  
26 no permits pending and Weinstein has voluntarily removed the inlet ditch and

1 outlet ditch that he contended were part of his salmon hatchery and filled portions  
2 of the pond and planted it with emergent vegetation as required by the PADE, so  
3 that it meets the requirements of the Voluntary Correction Agreement that he  
4 entered into?

5 c. Are any damages recoverable related to the Weinstein house?  
6 d. If any claims related to the Weinstein house remain, are they  
7 barred by Weinstein's failure to exhaust administrative remedies?  
8 e. Have Weinstein's claims been rendered moot by their  
9 removal of the structures that they contended were a "salmon hatchery" without  
10 ever having submitted a permit application for those structures?  
11 f. Does NYC have standing to pursue any claims under Article 7  
12 of the Settlement Agreement?

13 14  
15 EXPERT WITNESSES

16 The names and addresses of the expert witnesses to be used by each  
17 18 party at the trial and the issue upon which each will testify are:  
19

20 On behalf of plaintiffs:

21 (a) A. William Way  
22 The Watershed Company  
23 750 Sixth Street South  
Kirkland, WA 98033

24 Will Testify  
25 Equivalency of the Weinstein Salmon Project at 75 Skagit Key  
26

1 (b) Carl G. Hadley  
2 Cedarock Consultants, Inc.  
3 19609 - 244<sup>th</sup> Avenue N.E.  
4 Woodinville, WA 98077

5 Will Testify  
6 Suitability of the Weinstein Salmon Project for Rearing and  
7 Releasing Juvenile Salmon

8 (c) Wayne Daley  
9 Daley Design  
10 1646 Jeannette Place  
11 Bainbridge Island, WA 98110

12 Will Testify  
13 Suitability of the Weinstein Property for a Salmon  
14 Enhancement Project

15 On behalf of the City:

16 (a) Don E. Weitkamp  
17 Parametrix  
18 411 - 108<sup>th</sup> Avenue NE, Suite 1800  
19 Bellevue, WA 98004

20 Will Testify

21 Dr. Weitkamp will testify as an expert witness regarding what  
22 salmon habitat enhancement requires and why the salmon hatchery that Plaintiffs  
23 Weinstein constructed on their property at 75 Skagit Key is not a salmon habitat  
24 enhancement project. He will also testify that because of the way it was  
25 constructed and the loss of riparian vegetation that it caused, the salmon channel  
26 enhancements that Plaintiffs Weinstein constructed in Coal Creek itself in 2007  
have marginal, if any, value in improving salmon habitat in Coal Creek, and that  
the greatest opportunity for enhancing salmon habitat on the Weinstein properties

1 would be to provide riparian vegetation on the south bank of Coal Creek on  
2 73 Skagit Key, where instead the creek was armored with sand bags and rockery  
3 and was devoid of native vegetation.  
4

5 (b) Carol Helland  
6 City of Bellevue  
7 450 - 110<sup>th</sup> Avenue NE  
Bellevue, WA 98004

8 Will Testify

9 City Process and Procedures

10 **OTHER WITNESSES**

11 The names and addresses of witnesses, other than experts, to be used  
12 by each party at the time of trial and the general nature of the testimony of each  
13 are:

14 On behalf of plaintiffs:

15 (a) Steven W. Cole  
16 Newport Yacht Club  
17 81 Skagit Key  
18 Bellevue, WA 98006

19 Will Testify

20 Intent and negotiation of the Settlement Agreement.

21 Bellevue's failure to honor its obligations under the  
Settlement Agreement.

22 Efforts to restore salmon to Coal Creek.

23 Impacts of Bellevue's actions.

1 (b) Wayne Daley  
2 Daley Design  
3 1646 Jeannette Place  
Bainbridge Island, WA 98110

4 Will Testify

5 Salmon habitat enhancement projects for the Weinsteins'  
6 property.

7 Bellevue's knowledge of proposed salmon projects on the  
8 Weinstein's property.

9 Impacts of Bellevue's actions.

10 (c) Catherine Drews  
11 City of Bellevue  
12 450 - 110<sup>th</sup> Ave. N.E.  
P.O. Box 90012  
13 Bellevue, WA 98009

14 Will Testify

15 Bellevue's unwillingness to allow a salmon-rearing project at  
the mouth of Coal Creek.

16 Bellevue's opposition to and/or unwillingness to cooperate in  
17 the permitting for the salmon project as built on the  
18 Weinsteins' property.

19 The necessary elements of a salmon habitat enhancement  
20 project.

21 (d) Stephen Faloon  
22 Newport Yacht Club  
23 81 Skagit Key  
Bellevue, WA 98006

24 Will Testify

25 Intent and negotiation of the Settlement Agreement.

Bellevue's failure to honor its obligations under the Settlement Agreement.

### Efforts to restore salmon to Coal Creek.

### Impacts of Bellevue's actions.

(e) Carol Helland  
City of Bellevue  
450 - 110<sup>th</sup> Ave. N.E.  
P.O. Box 90012  
Bellevue, WA 98009

### Will Testify

Bellevue's unwillingness to allow a salmon-rearing project at the mouth of Coal Creek.

Bellevue's lack of knowledge regarding the terms, meaning and intent of the Settlement Agreement.

Bellevue's opposition to and/or unwillingness to cooperate in the permitting for the salmon project as built on the Weinsteins' property.

Bellevue's refusal to accord meaning to its cooperation and non-opposition obligations.

(f) Dr. Paul Nichol  
Newport Yacht Club  
81 Skagit Key  
Bellevue, WA 98006

### Will Testify

## Intent and negotiation of the Settlement Agreement.

Bellevue's failure to honor its obligations under the Settlement Agreement.

## Efforts to restore salmon to Coal Creek.

## Impacts of Bellevue's actions.

1 (g) Michael Paine  
2 City of Bellevue  
3 450 - 110<sup>th</sup> Ave. N.E.  
4 P.O. Box 90012  
5 Bellevue, WA 98009

6 Will Testify

7 Bellevue's knowledge of plans for a salmon habitat  
8 enhancement project on the Weinsteins' property.

9 Bellevue's unwillingness to allow a salmon-rearing project at  
10 the mouth of Coal Creek.

11 Bellevue's opposition to and/or unwillingness to cooperate in  
12 permitting for the salmon project as built on the Weinsteins'  
13 property.

14 (h) William Shiels  
15 Talasaea Consultants, Inc.  
16 15020 Bear Creek Road N.E.  
17 Woodinville, WA 98077

18 Will Testify

19 Efforts to make the salmon project on the Weinsteins'  
20 property acceptable to Bellevue.

21 Appropriate development of a wetlands site and the  
22 suitability of the Weinstein property for a salmon-rearing  
23 project.

24 Unwillingness of Bellevue to allow a salmon-rearing project  
25 on the Weinstein property.

26 Nature of the salmon project as it existed in 2008, the  
subsequent modifications made to the property, and its  
current state.

1 (i) Scott Taylor  
2 City of Bellevue  
3 450 - 110<sup>th</sup> Ave. N.E.  
4 P.O. Box 90012  
5 Bellevue, WA 98009

6 Will Testify

7 Bellevue's lack of knowledge regarding the terms, meaning  
8 and intent of the Settlement Agreement.

9 (j) Roger L. Urbaniak  
10 4112 - 78<sup>th</sup> Avenue S.E.  
11 Mercer Island, WA 98040

12 Will Testify

13 Placement of salmon eggs in the Lake Washington basin,  
14 including in streams in Bellevue.

15 Availability of salmon eggs for a salmon project on the  
16 Weinstein property.

17 Suitability of the Weinstein property for salmon incubation  
18 and rearing.

19 (k) A. William Way  
20 The Watershed Company  
21 750 Sixth Street South  
22 Kirkland, WA 98033

23 Will Testify

24 Suitability and equivalency of the salmon project built at 75  
25 Skagit Key.

26 Bellevue's opposition to and/or lack of cooperation in  
27 permitting for the salmon project as built at 75 Skagit Key.

28 (l) William S. Weinstein  
29 75 Skagit Key  
30 Bellevue, WA 98006

31 Will Testify

1 Intent and negotiation of the Settlement Agreement.

2 Bellevue's opposition to and/or lack of cooperation in  
3 permitting for salmon projects at 75 Skagit Key.

4 Efforts to restore salmon to Coal Creek.

5 Impacts of Bellevue's actions.

6 Plaintiffs reserve the right to call any of the witnesses listed by  
7  
8 Bellevue.

9 On behalf of the City:

10 To the extent that they have not testified in the Plaintiffs' case, the  
11 City will call the following witnesses:

12 (a) Scott Taylor  
13 Bellevue City Hall  
14 450 - 110<sup>th</sup> Ave. NE  
15 P.O. Box 90012  
16 Bellevue, WA 98009

17 Mr. Taylor will testify about some of Weinstein's code  
18 enforcement actions, the negotiations of the Settlement Agreement, and  
19 Weinstein's early proposals for salmon habitat enhancement. In addition he may  
20 testify in rebuttal to opinions offered by Plaintiffs' experts William Way and  
21 Wayne Daley.

22 (b) Carol Helland  
23 Bellevue City Hall  
24 450 - 110<sup>th</sup> Ave. NE  
25 P.O. Box 90012  
26 Bellevue, WA 98009

1 Ms. Helland will testify about Weinstein's historic code  
2 violations, the PADE, the applications that Plaintiffs Weinstein have filed with the  
3 City of Bellevue for development of their properties on 73 and 75 Skagit Key and  
4 the City of Bellevue's processing and issuance of those permits, the requirements  
5 of the Protected Area Development Exception (PADE) governing the property at  
6 75 Skagit Key, Plaintiff Weinstein's failure to comply with City code in the  
7 construction of improvements on 75 Skagit Key, Plaintiff Weinstein's failure to  
8 construct the flood control berm on 73 Skagit Key as required by paragraph 6.1 of  
9 the Settlement Agreement until the summer of 2011, the ways in which the salmon  
10 hatchery that Plaintiffs Weinstein constructed on 75 Skagit Key fails to comply  
11 with Bellevue city code and the ways in which his proposal to again install a  
12 salmon hatchery on 75 Skagit Key violates city code. She will testify about what  
13 constitutes habitat enhancement under the Bellevue city code and why the  
14 features that were required to be removed under the VCA are not habitat  
15 enhancement under the code. She may also testify concerning why the  
16 "Equivalency Report" that was submitted by Plaintiffs Weinstein in 2007 did not  
17 show that what had been constructed was "functionally equivalent" to the  
18 mitigation that was required in order to comply with the conditions on the PADE,  
19 and in fact violated the specific provisions of several conditions of the PADE. She  
20 will testify about various provisions of the code and how those provisions are  
21 interpreted by the City of Bellevue.

1 (c) Catherine Drews  
2 City of Bellevue  
3 450 - 110<sup>th</sup> Ave. NE  
4 P.O. Box 90012  
5 Bellevue, WA 98009

6 Catherine Drews will testify about why the City requested the  
7 Equivalency Report, why it did not show that what Weinstein had constructed  
8 was functionally equivalent to the wetland and riparian buffer enhancement  
9 required by the PADE, about the negotiation of the Voluntary Correction  
10 Agreement, why Weinstein's proposal to keep the pond as a large open area failed  
11 to provide mitigation of the edge and border effects of residential development  
12 within a wetland and riparian buffer as required by the PADE, why Weinstein's  
13 proposal to continue to discharge water from the pond directly into Coal Creek  
14 failed to protect the hydrology of the wetland as required by the PADE, and why  
15 placing an egg box in an artificial structure with no connection to Coal Creek is  
16 not salmon habitat enhancement.

17  
18 (d) Don E. Weitkamp  
19 Parametrix  
20 411 - 108<sup>th</sup> Avenue NE, Suite 1800  
21 Bellevue, WA 98004

22 Testimony described above.

23 To the extent that he has not testified during the Plaintiffs' case, the  
24 City may call:  
25  
26

Michael Paine  
City of Bellevue  
450 110<sup>th</sup> Avenue NE  
P.O. Box 90012  
Bellevue, WA 98009

Possible Witness Only

Michael Paine may testify about the PADE, Weinstein's historic code violations, the negotiation and approval of the Natural Areas Enhancement Plan, compliance with which formed the basis for the City's approval of a permit for Weinstein's house on 75 Skagit Key, why the facilities actually constructed on 75 Skagit Key were not functionally equivalent to the Natural Areas Enhancement Plan and failed to comply with the PADE, and why Weinstein's proposal for a large pond supplied with industrially purified water, discharging ground water and storm water from 75 Skagit Key directly into Coal Creek is not a salmon habitat enhancement, and does not comply with the conditions of the PADE.

The City will call the following witnesses only if needed in order to address an issue that arose during the Plaintiffs' case which the witnesses listed above cannot address:

(a) Kit Paulsen  
City of Bellevue  
450 110<sup>th</sup> Ave. NE  
P.O. Box 90012  
Bellevue, WA 98009

### Possible Witness Only

Kit Paulsen may testify regarding the difference between salmon habitat and a salmon hatchery. She may also respond to claims by Plaintiffs in their case in chief regarding communications that various Plaintiff witnesses may have had with her, or regarding the condition of salmon spawning in Coal Creek.

(b) Buck Harrison  
City of Bellevue  
450 110<sup>th</sup> Ave. NE  
P.O. Box 90012  
Bellevue, WA 98009

Possible Witness Only

Mr. Harrison will testify if necessary to lay the foundation for admission of the graphic he has prepared overlaying the boundaries of 75 Skagit Key and the wetland delineations and buffers and setbacks onto historic and current aerial photos of 75 Skagit Key and determining the area of wetland buffer and wetland that Plaintiffs Weinstein have filled without permits.

(c) Aaron Roden  
City of Bellevue  
450 110<sup>th</sup> Ave. NE  
P.O. Box 90012  
Bellevue, WA 98009

### Possible Witness Only

Mr. Roden may testify to explain why the deviations from the approved permits for 75 Skagit Key were not discovered by the City of Bellevue until the fall of 2008, and that after being told to submit a correction, Plaintiffs

1 Weinstein continued construction of improvements in deviation from the  
2 approved permits, which the City was not aware of until it was able to conduct a  
3 site visit in the spring of 2009.  
4

#### 5 EXHIBITS

6 Following is the status of exhibits designated by the plaintiffs and by  
7 the defendant. A complete listing of those exhibits, showing into which category  
8 each exhibit falls and including a description of each such exhibit, is attached to  
9 this Pretrial Order as Exhibit A.  
10

11 (a) Admissibility Stipulated:

12 Plaintiffs' Exhibits: 1, 4-6, 10, 11, 27, 31, 34-40, 44, 45, 47-50, 54-56,  
13 59, 61-63, 75, 80, 83, 85, 88, 89, 93-96, 129, 133, 136, 142, 147, 159, 161-163, 172, 173,  
14 176-178.  
15

16 Defendant's Exhibits: 314, 316, 319-322, 327-334, 336, 337, 341, 342,  
17 344, 345, 347-355, 357-362, 395.  
18

19 (b) Authenticity Stipulated; Admissibility Disputed

20 Plaintiffs' Exhibits: 9, 12-14, 20-24, 30, 42, 43, 46, 53, 58, 60, 64-74, 76,  
21 77, 79, 81, 82, 84, 86, 91, 94, 98-100, 105, 106, 109-111, 113, 116, 117, 119, 122-128,  
22 130-132, 134, 135, 137, 138, 140, 145, 152-158, 160, 164, 168-171.  
23

24 Defendant's Exhibits: 301-313, 315, 317, 318, 323-326, 335, 338-340,  
25 343, 346, 356, 363-394, 396-402.  
26

1 (c) Authenticity and Admissibility Disputed:

2 Plaintiffs' Exhibits: 2, 3, 7, 8, 15-19, 25, 26, 28, 29, 32, 33, 41, 52, 57, 70,  
3 78, 87, 90, 92, 97, 101-104, 107, 108, 112, 114, 115, 118, 120, 121, 139, 141, 143, 144,  
4 146, 148-151, 165-167, 174, 175, 179-210.

5 Defendant's Exhibits: None.

6

7 **ACTION BY THE COURT**

8 (a) This case is scheduled for trial without a jury on March 5,  
9 2012 at 9:00 a.m.

10 (b) Trial briefs, proposed findings of fact and conclusions of law  
11 shall be submitted to the Court on or before February 10, 2012. Trial exhibits will  
12 be submitted to the Court on or before March 2, 2012.

13 (c) Pretrial Rulings. The Court has denied the defendant's  
14 motion for summary judgment as reflected in its Order Denying Defendant's  
15 Motion for Summary Judgment of November 9, 2011 (Dkt. #164). The Court has  
16 stricken Plaintiffs' claim for declaratory judgment asserted in the draft pretrial  
17 order (Dkt. # 197). The Court has ruled on motions in limine, which rulings are  
18 set forth in Order on Motions in Limine, dated January 27, 2012 (Dkt. #189). The  
19 Court has made certain rulings regarding procedures for trial, which rulings are  
20 set forth in a Minute Entry, dated January 27, 2012 (Dkt. #190).

21  
22 This order has been approved by the parties as evidenced by the  
23 signatures of their counsel. This order shall control the subsequent course of the  
24  
25  
26

1 action unless modified by a subsequent order. This order shall not be amended  
2 except by order of the Court pursuant to agreement of the parties or to prevent  
3 manifest injustice.

4 DATED this 2 day of March, 2012.

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8  
9



The Honorable Marsha J. Pechman  
United States District Judge

10 FORM APPROVED:

11 LAWRENCE KAHN  
12 LAW GROUP, P.S.

13 By /s/ Lawrence M. Kahn  
14 Lawrence M. Kahn, WSB No. 29639  
15 Attorney for Plaintiff Newport Yacht Club

16 HALL ZANZIG CLAFLIN  
17 McEACHERN PLLC

18  
19 By /s/ Spencer Hall  
20 Spencer Hall, WSB No. 6162  
21 Arthur C. Claflin, WSB No. 5475  
22 Attorneys for Plaintiff Weinstins

23 GRAHAM & DUNN PC

24 By /s/ Elaine L. Spencer  
25 Elaine L. Spencer, WSB No. 6963  
26 Attorneys for Defendant City of Bellevue

1 CITY OF BELLEVUE

2  
3 By /s/ Cheryl A. Zakrzewski  
4 Cheryl A. Zakrzewski, WSB No. 15906  
5 Assistant City Attorney  
6 Attorneys for Defendant City of Bellevue

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# **EXHIBIT A**

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated, but not Admissible	Objection to Authenticity & Admissibility
1	08/08/04	Settlement Agreement and Release by and between The Newport Yacht Club, William S. Weinstein and Leanne C. Weinstein and the City of Bellevue. (Taylor Dep. Ex. 2)	x		
2	12/12/08	Environmental Equivalency Report The Weinstein Residence prepared for The City of Bellevue on behalf of William S. Weinstein by The Watershed Company. (Chulsky Dep. Ex. 6)			x
3	11/21/08	Letter from Catherine Drews to David Bricklin. (Chulsky Dep. Ex. 3)			x
4	01/20/09	Letter from Catherine Drews to David Bricklin. (Chulsky Dep. Ex. 2)	x		
5	03/06/09	Letter from Spencer Hall to Myrna Basich.	x		
6	04/23/09	Letter from Lacey Madche to David Bricklin, Lawrence Kahn and Spencer Hall.	x		
7	11/20/08	Weinstein Final Approval on Single Family Building Permit Agenda. (Chulsky Dep. Ex. 4)			x
8	11/20/08	E-mail from Carol Helland to Wes Jorgenson, Scott Taylor, Michael Paine, Leah Hyatt, Catherine Drews and Lacey Madche. (Drews Dep. Ex. 5) (DSD001379)			x
9	11/26/08	E-mail from Catherine Drews to Carol Helland and Michael Paine. (Drews Dep. Ex. 6) (DSD001451)		x	
10	12/04/08	Letter from Lacey Madche to David Bricklin and Lawrence Kahn. (Drews Dep. Ex. 7) (DSD001632-1636)	x		
11	03/02/09	Letter from Catherine Drews to David Bricklin. (Drews Dep. Ex. 9) (DSD001272-1273)	x		
12	03/18/09	E-mail from Catherine Drews to Matthews Jackson. (Drews Dep. Ex. 10) (DSD003788)		x	
13	10/13/09	E-mail from Catherine Drews to Paul Anderson. (Drews Dep. Ex. 11)		x	

EXHIBIT	DATE	DESCRIPTION	Admissibility	Stipulated	Authenticity	Stipulated but not Admissible	Objection to Authenticity & Admissibility
			Stipulated	Authenticity	Stipulated but not Admissible	Objection to Authenticity & Admissibility	
14	10/16/09	E-mail from Paul Anderson to Lori Lull. (Drews Dep. Ex. 12)		X			
15	03/30/09	E-mail from Lacey Madche to Council. (Helland Dep. Ex. 3) (DSD001991-1993)				X	
16		Court Excluded Exhibit					
17	08/21/06	E-mail from Joy Ramshur to Scott Taylor. (Chulsky Dep. Ex. 5)				X	
18	01/19/05	Pre-App Meeting List of Attendees. (Paine Dep. Ex. 1)				X	
19	01/05/05	Letter from Thomas Mueller regarding Pre-Application Meeting scheduled for January 19, 2005. (Paine Dep. Ex. 2)				X	
20	03/26/07	E-mail from Dan Nickel to Michael Paine. (Paine Dep. Ex. 2A) (DSD003763-3764)		X			
21	11/27/06	E-mail from Carol Helland to Michael Paine. (Paine Dep. Ex. 3)		X			
22	11/20/08	E-mail from Heidi Bedwell to Michael Paine. (Paine Dep. Ex. 4) (DSD001361)		X			
23	11/25/08	E-mail from City Hall Events to Michael Paine. (Paine Dep. Ex. 5) (DSD001498)		X			
24	02/11/09	E-mail from Michael Paine to Susan Powell. (Paine Dep. Ex. 6) (DSD001683)		X			
25	03/22/07	E-mail from Aaron Roden to Kathie Gillis, Keayleen McDaniels, Roberta Oh and Debra Orr-Miscoe. (Roden Dep. Ex. 1) (DSD002168, 2170, 2191, 2180, 2185 and 2182)				X	
26	04/02/07	E-mail from Bill Way to Aaron Roden and Leah Hyatt. (Roden Dep. Ex. 2) (DSD002153-2159)				X	
27	10/08/08	Inspection Notice by Aaron Roden. (Roden Dep. Ex. 3)	X				

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
28	00/00/00	Response to Request for Production No. 19. (Zakrzewski Dep. Ex. 5)			X
29	09/15/09	Letter from Cheryl Zakrzewski to David Bricklin, Lawrence Kahn and Spencer Hall. (Zakrzewski Dep. Ex. 6)			X
30	11/05/08	E-mail from Dave Bricklin to Michael Paine. (Zakrzewski Dep. Ex. 7)		X	
31	01/31/01	City of Bellevue Department of Planning and Community Development Land Use Division Staff Report.	X		
32	05/09/03	Letter from David Bricklin to Mayor Connie Marshall.			X
33	05/23/03	Letter from Joseph Rochelle to Connie Sue Martin.			X
34	05/06/04	Letter from John Houlihan to David Bricklin, Elaine Spencer, Joseph Rochelle and Beth Ginsberg.	X		
35	06/19/04	E-mail from Elaine Spencer to Marilyn Nitteberg, Scott Taylor and Brad Miyake.	X		
36	06/28/04	Plaintiffs' Draft Proposed Settlement Deal Points.	X		
37	07/02/04	City of Bellevue's Draft Proposed Settlement Deal Points with fax transmittal letter from John Houlihan to David Bricklin and Bill Weinstein.	X		
38	07/26/04	E-mail from Elaine Spencer to Marilyn Nitteberg, Scott Taylor and Brad Miyake.	X		
39	07/26/04	Plaintiffs' Draft Proposed Settlement Agreement.	X		
40	07/28/04	Defendants' Revision regarding Settlement Agreement.	X		
41	00/00/11	CD prepared by Newport Yacht Club titled "A Neighborhood Saving Coal Creek."			X

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
42	11/03/04	Dredge Escrow Agreement by and among The Newport Yacht Club, Inc., The City of Bellevue Washington, and Stewart Title Insurance Company, Inc.		X	
43	11/15/04	E-mail from Wayne Daley to Kit Paulsen.		X	
44	11/16/04	E-mail from Wayne Daley to Kit Paulson.	X		
45	11/24/04	Letter from Michael Paine to Bill Weinstein.	X		
46	11/29/04	E-mail from Wayne Daley to Kit Paulsen.		X	
47	11/29/04	E-mail from Scott Taylor to Aberlardo Santos, Regan Sidie and Kit Paulsen.	X		
48	12/06/04	E-mail from Wayne Daley to Kit Paulsen.	X		
49	12/09/04	Letter from Mary Kate Berens to David Bricklin.	X		
50	12/14/04	E-mail from Wayne Daley to Kit Paulsen.	X		
51	12/27/04	Letter from Wayne Daley to Susan Powell.		X	
52	12/28/04	Letter from Wayne Daley to William Weinstein.			X
53	01/12/05	E-mail from Michael Paine to Kit Paulsen.		X	
54	02/00/05	Letter from Wayne Daley to Michael Paine.	X		
55	06/07/05	E-mail from Kit Paulsen to Michael Paine and Scott Taylor.	X		
56	01/24/06	E-mail from Michael Paine to Jim Gough.	X		

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
57	02/21/06	E-mail from Kit Paulsen to Damon Diessner.			X
58	03/13/06	E-mail from Michael Paine to Leah Porco.		X	
59	03/21/06	Draft Biological Evaluation prepared for the U.S. Army Corps of Engineers on behalf of William Weinstein by The Watershed Company.	X		
60	03/24/06	Letter from Amy Myers to U.S. Army Corps of Engineers.		X	
61	05/23/06	Memorandum from Mark Indrebo to Michael Paine.	X		
62	06/02/06	City of Bellevue Department of Planning and Community Development Services Land Use Staff Report, Environmental Review and State Environmental Policy Act Threshold Determination.	X		
63	06/02/06	City of Bellevue Department of Planning & Community Development Application for Land Use Approval.	X		
64	06/22/06	E-mail from Michael Paine to Heidi Bedwell, Drew Folsom, Leah Hyatt, Mary Jo McArdle, Matthews Jackson, Michael Paine, Morgan Nichols and David Pyle. (DSD003561-3562)		X	
65	06/29/06	E-mail from Ruth Densley to Karen Spaulding. (DSD003834-3840)		X	
66	07/06/06	E-mail from Brian Ward to Leah Hyatt, Michael Paine, Scott Taylor and Rick Watson. (Attached memorandum has wrong date because of the auto date feature in the document)		X	
67	07/10/06	E-mail from Savina Uzunow to Leah Hyatt.		X	
68	08/28/06	E-mail from Michael Paine to Leah Hyatt.		X	

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated But not Admissible	Objection to Authenticity & Admissibility
69	10/10/06	E-mail from Joy Ramshur to Kit Paulsen.		X	
70	11/13/06	E-mail from Rick Watson to Wes Jorgenson, Pam Maloney and Kit Paulsen.			X
71	11/14/06	E-mail from Michael Paine to Leah Hyatt. (DSD002971-2988)		X	
72	11/27/06	E-mail from Michael Paine to Leah Hyatt.		X	
73	11/27/06	E-mail from Leah Hyatt to Michael Paine. (DSD003606)		X	
74	11/30/06	E-mail from Ruth Densley to Tom Miller. (DSD002016-2023)		X	
75	02/13/07	Letter from Susan Powell to William Weinstein.	X		
76	03/08/07	E-mail from Michael Paine to Leah Hyatt and Patti Wilma. (DSD002242-2246)		X	
77	03/14/07	E-mail from Carol Orr to Leah Hyatt.		X	
78	03/22/07	E-mail from Michael Paine to Carol Helland. (DSD002256-2261)			X
79	03/22/07	E-mail from Michael Paine to Carol Helland. (DSD002253-2254)		X	
80	03/26/07	Letter from Carol Helland to Bill Weinstein.	X		
81	03/26/07	E-mail from Carol Helland to David Bricklin. (DSD002247-2252)		X	
82	03/26/07	E-mail from Michael Paine to Dan Nickel.		X	
83	04/01/07	E-mail from Bill Way to William Weinstein.	X		

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated, but not Admissible	Objection to Authenticity & Admissibility
84	05/11/07	E-mail from Scott Taylor to Joseph O'Leary.		X	
85	05/17/07	E-mail from Bob at Arborview to William Weinstein.	X		
86	07/10/07	E-mail from Michael Paine to Leah Hyatt.		X	
87	07/11/07	E-mail from Leah Hyatt to Michael Paine.			X
88	07/16/07	Washington Department of Fish and Wildlife Hydraulic Project Approval.	X		
89	10/31/07	E-mail from Aaron Bosworth to Bruce Jensen.	X		
90	12/04/07	E-mail from Michael Paine to Leah Hyatt.			X
91	02/29/08	E-mail from David Pyle to Michael Paine.		X	
92	10/20/08	E-mail from Lee Rotramel to Bill Way.			X
93	10/23/08	E-mail from Leah Hyatt to Michael Paine. (DSD003782)	X		
94	11/04/08	E-mail from Michael Paine to Bill Way.		X	
95	11/05/08	E-mail from Michael Paine to David Bricklin and Bill Way.	X		
96	11/18/08	Letter from David Bricklin to Myrna Basich. (DSD001380-1382)	X		
97	11/21/08	Letter from Catherine Drews to David Bricklin with Exhibits A, B and C.			X
98	11/21/08	E-mail from Michael Paine to Heidi Bedwell. (DSD001639)		X	

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
99	11/21/08	E-mail from Catherine Drews to Sharon Taylor. (DSD000543-544)		X	
100	11/21/08	E-mail from Catherine Drews to Carol Helland. (DSD000040)		X	
101	11/24/08	E-mail from Mary Kate Berens to Catherine Drews and Lacey Madche. (DSD000102-105)			X
102	11/24/08	E-mail from Myrna Basich to Michelle Murphy. (DSD001774-1775)			X
103	11/24/08	E-mail from Carol Helland to Mary Kate Berens, Catherine Drews and Lacey Madche. (DSD000010)			X
104	11/24/08	E-mail from Carol Helland to Mike Brennan. (DSD000001-3)			X
105	11/25/08	E-mail from David Bricklin to Bill Way.		X	
106	11/26/08	E-mail from Bill Way to David Bricklin.		X	
107	12/04/08	E-mail from Dennis Vidmar to Lacey Madche, Wes Jorgenson and Navdeep Ota. (DSD000887-888)			X
108	12/12/08	E-mail from David Bricklin to Catherine Drews. (DSD001385-1449)			X
109	12/12/08	E-mail from Catherine Drews to Carol Helland. (DSD000133-198)		X	
110	12/12/08	E-mail from Catherine Drews to Lacey Madche. (DSD000308-373)		X	
111	12/15/08	E-mail from Lacey Madche to Lori Riordan. (DSD000808-873)		X	
112	12/15/08	E-mail from Lacey Madche to Dennis Vidmar, Wes Jorgenson, Navdeep Ota, Scott Taylor and Bruce Jensen. (DSD000907-972)			X

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated not Admissible	Objection to Authenticity & Admissibility
113	12/24/08	E-mail from Dave Bricklin to William Weinstein and Bill Way.		X	
114	12/29/08	E-mail from Catherine Drews to Carol Helland and Michael Paine. (DSD001748)			X
115	12/30/08	E-mail from Catherine Drews to Michael Paine. (DSD000387-452)			X
116	12/30/08	E-mail from Bill Way to William Weinstein and David Bricklin.		X	
117	12/31/08	E-mail from Catherine Drews to Lacey Madche. (DSD000378)		X	
118	12/31/08	E-mail from Lacey Madche to Lori Riordan. (DSD000997)			X
119	12/31/08	E-mail from David Bricklin to Catherine Drews.		X	
120	12/31/08	E-mail from David Bricklin to Catherine Drews. (DSD000017-18)			X
121	01/03/09	E-mail from Carol Helland to Catherine Drews. (DSD000096-97)			X
122	01/06/09	E-mail from Catherine Drews to Carol Helland and Michael Paine. (DSD000041-42)		X	
123	01/07/09	E-mail from Catherine Drews to David Bricklin. (DSD000775-776)		X	
124	01/07/09	E-mail from Catherine Drews to Leah Hyatt. (DSD003823-3824)		X	
125	01/07/09	E-mail from David Bricklin to Catherine Drews.		X	
126	01/07/09	E-mail from Catherine Drews to David Bricklin. (DSD000660-662)		X	
127	01/08/09	Letter from David Bricklin to Catherine Drews.		X	

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated But not Admissible	Objection to Authenticity & Admissibility
128	01/08/09	E-mail from Catherine Drews to Carol Helland and Michael Paine. (DSD000048-52)		X	
129	01/08/09	E-mail from Catherine Drews to David Bricklin. (DSD000019-21)		X	
130	01/08/09	E-mail from Catherine Drews to Michael Paine. (DSD000621-624)		X	
131	01/20/09	E-mail from Catherine Drews to Leah Hyatt. (DSD000770-774)		X	
132	01/29/09	E-mail from Carol Helland to Leah Hyatt. (DSD000006-7)		X	
133	02/06/09	Letter from Catherine Drews to David Bricklin.		X	
134	02/06/09	E-mail from Catherine Drews to David Bricklin. (DSD000766-768)		X	
135	02/11/09	E-mail from Michael Paine to Carol Helland. (DSD000053)		X	
136	02/20/09	Letter from David Bricklin to Catherine Drews.		X	
137	02/23/09	E-mail from Catherine Drews to Sharon Taylor. (DSD000635)		X	
138	03/00/09	2008 Salmon Spawner Surveys Kelsey Creek, West Tributary, Richards Creek and Coal Creek prepared for the City of Bellevue Contracting Services by The Watershed Company.		X	
139	03/02/09	E-mail from Catherine Drews to Lacey Madche and Thomas Campbell. (DSD001883-1885)		X	
140	03/10/09	Letter from Roger Urbaniak to William Weinstein.		X	
141	03/17/09	E-mail from Sharon Taylor to Lacey Madche. (DSD001263-1264)		X	
142	03/23/09	Letter from Lacey Madche to David Bricklin, Lawrence Kahn and Spencer Hall.		X	

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
143	03/30/09	E-mail from Catherine Drews to Lacey Madche and Mike Brennan. (DSD000676-678)			X
144	03/30/09	E-mail from Mike Brennan to Dennis Vidmar, Lacey Madche, Carol Helland, Catherine Drews and Lori Riordan. (DSD000067-69)			X
145	03/30/09	E-mail from Michael Paine to Carol Orr and David Pyle. (DSD000036)		X	
146	03/31/09	E-mail from Thomas Campbell to Doug Fox, Michael Paine and Thomas McFarlane. (DSD001502)			X
147	04/01/09	Letter from Tom Campbell to David Bricklin and Spencer Hall.	X		
148	04/24/09	E-mail from Lacey Madche to Lori Riordan. (DSD001309-1310)			X
149	04/30/09	E-mail from Lacey Madche to Thomas Campbell. (DSD001784)			X
150	04/30/09	E-mail from Lacey Madche to Cheryl Zakrzewski. (DSD001157-1158)			X
151	04/30/09	E-mail from Dennis Vidmar to Wes Jorgenson. (DSD002719)			X
152	06/04/09	Letter from Arthur Claflin to Grant Degginger.		X	
153	06/05/09	Letter from Leah Hyatt to David Bricklin.		X	
154	07/24/09	Letter from Cheryl Zakrzewski to Arthur Claflin.		X	
155	07/27/09	Letter from Arthur Claflin to Cheryl Zakrzewski.		X	
156	07/31/09	Letter from Cheryl Zakrzewski to Arthur Claflin.		X	

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
157	08/04/09	Letter from Arthur Claflin to Cheryl Zakrzewski.		X	
158	08/11/09	Letter from Joanne Nicolai to Arthur Claflin.		X	
159	08/20/09	Letter from Tom Campbell to William Weinstein.	X		
160	08/25/09	Letter from Arthur Claflin to Bellevue City Clerk.		X	
161	09/04/09	Letter from Catherine Drews to David Bricklin.	X		
162	09/11/09	Letter from Spencer Hall to Tom Campbell.	X		
163	09/23/09	Notice of Civil Violation from Thomas Campbell to William and Leanne Weinstein.	X		
164	09/29/09	Letter from Patrick Conn to Arthur Claflin.		X	
165	09/29/09	E-mail from Paul Anderson to Lori Lull.			X
166		Court Excluded Exhibit			
167		Court Excluded Exhibit			
168	01/12/05	E-mail from Michael Paine to Kit Paulsen.		X	
169	11/15/04	E-mail from Wayne Daley to Kit Paulsen.		X	
170	11/16/04	E-mail from Wayne Daley to Kit Paulsen.		X	
171	11/29/04	E-mail from Wayne Dailey to Kit Paulsen.		X	

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
172	12/13/04	Memorandum from Scott Taylor re Proposed Stream Enhancements at the Mount of Coal Creek (Weinstein).	X		
173	04/08/09	Letter from Spencer Hall to Tom Campbell and Lacey Madche.	X		
174		Court Excluded Exhibit+C39			
175	05/15/09	E-mail from Scott Taylor to Don McQuilliams and Bruce Jensen.			X
176	10/05/11	Letter from Michael Brennan to William and Leanne Weinstein.	X		
177	12/05/11	Letter from Michelle Walker to William Weinstein.	X		
178	12/05/11	Order of Dismissal in the Matter of a Notice of Civil Violation issued to William & Leanne Weinstein, before the Hearing Examiner for the City of Bellevue.	X		
179	11/21/05	Photograph of view east over what is now the recently revised pond at 75 Skagit Key.			X
180	11/21/05	Photograph of view west across 75 Skagit Key property following recent cleanup. Coal Creek shows to left of photo.			X
181	11/21/05	Photograph of view west over 75 Skagit Key property following site cleanup.			X
182	07/21/05	Photograph of view west of partially cleared property at 75 Skagit Key.			X
183	02/21/06	Photograph of view south showing sandbags along left bank of Coal Creek used to prevent flooding of adjacent property to south.			X
184	01/25/06	Photograph of view north from Coal Creek delta showing undefined stream channel prior to streambank and channel stabilization efforts.			X

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
185	01/25/06	Photograph of view upstream toward east from Coal Creek delta showing undefined stream channel prior to streambank and channel stabilization efforts.			X
186	01/25/06	Additional photograph of view upstream toward east from Coal Creek delta showing undefined stream channel prior to streambank and channel stabilization efforts.			X
187	10/12/09	Photograph (timestamp 15:38).			X
188	10/12/09	Photograph (timestamp 15:41).			X
189	10/12/09	Photograph (timestamp 15:38).			X
190	10/12/09	Photograph (timestamp 15:45)			X
191	10/12/09	Photograph (timestamp 15:45)			X
192	10/06/11	Photograph of view west across modified pond at 75 Skagit Key property.			X
193	10/06/11	Photograph of view west across modified pond and adjacent landscaping west of residence at 75 Skagit Key.			X
194	10/06/11	Photograph of view west across revised pond showing native emergent and upland plants. Pond filled to maximum depth of 30 inches versus original pond depth of 54 inches.			X
195	10/06/11	Photograph of view west showing north artificial stream. Recirculation of water through this stream feature is part of the water treatment system formerly used for salmon enhancement.			X
196	10/06/11	Photograph of view toward northeast across pond showing native emergent plantings along pond edge.			X

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated	not Admissible	Objection to Authenticity & Admissibility
197	10/06/11	Photograph of view to northwest showing area of deck removal and native plantings at SE corner of residence at 75 Skagit Key.				X
198	10/06/11	Photograph of waterfall at east end of former southern artificial stream. Area to west has been restored with native plant species following removal of the stream and salmon egg hatching box.				X
199	10/06/11	Photograph of waterfall at east end of former south artificial stream extending along south side of residence at 75 Skagit Key property. Former stream channel extending west from waterfall has been removed and the area restored with native landscaping.				X
200	10/06/11	Photograph of view west of Coal Creek at Lake Washington. Completed Phase 1 and 2 channel and streambank stabilization project.				X
201	10/06/11	Additional photograph of view west of Coal Creek at Lake Washington. Completed Phase 1 and 2 channel and streambank stabilization project.				X
202	10/06/11	Photograph of streambank and channel stabilization, left bank Coal Creek with large woody material, coir soil lifts, and willow cuttings.				X
203	10/06/11	Photograph of view east showing recently completed streambank and channel stabilization project along left bank of Coal Creek.				X
204	10/06/11	Photograph of view east along south side of residence at 75 Skagit Key showing area where south artificial stream has been removed and restored with native plantings.				X
205	10/06/11	Photograph of access to vault near waterfall at southeast corner of 75 Skagit Key property.				X
206	10/06/11	Photograph of view inside north water treatment vault. Treatment includes an ultra-violet purification system and sediment filtration.				X

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
207	10/06/11	Photograph of view inside of water treatment/distribution vault near waterfall at southeast corner of 75 Skagit Key property.			X
208	10/06/11	Photograph of controls for water recirculation and treatment at southeast corner of property near waterfall.			X
209	10/06/11	Photograph of view west along south side of residence at 75 Skagit Key showing landscape restoration over former south artificial stream.			X
210	10/06/11	Photograph of view toward northwest across log weirs installed at west end of modified pond. Note dense growth of small-fruited bulrush between weir logs.			X
211	07/28/04	Defendant's Response regarding Settlement Agreement.	X		
212	10/28/04	Agreed Order of Dismissal.			
213	07/07/04	Proposed Settlement Deal Points from 7/7/04 Mediation Session.			

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated	Authenticity but not Admissible	Objection to Authenticity	& Admissibility
301	06/07/01	Letter from David Bricklin to Michael Paine regarding Yonich PADE.		X			
302	06/13/00	Letter with enclosure from B-Twelve Associates to John Yonich.		X			
303	11/13/01	Letter to David Bricklin from Carol Helland re Yonich Property.		X			
304	11/27/01	Letter from David Bricklin to Carol Helland re Yonich Property.		X			
305	06/25/02	Hearing Examiner decision on Yonich PADE.		X			
306		Yonich PADE disturbance Area.		X			
307	11/06/01	Email from Sandra LaMontagne to Gough, McFarlane, Helland, Scott Taylor, Jorgenson, Paine and McArdle re 73 Skagit Key and the infilling of the delta at the end of coal creek.		X			
308	01/10/02	Letter from S. LaMontagne to W. Weinstein regarding code violations and stop work notice.		X			
309	03/28/01 (sic)	Letter from Mary Jo McArdle to William Weinstein regarding riparian corridor protected area restoration on 73 Skagit Key.		X			
310	07/12/04	Weinstein Property 2004 Wetland and Buffer Monitoring Report.		X			
311	01/10/03	Letter from W. Weinstein to M. Paine.		X			
312	01/27/03	Letter from M. Paine to W. Weinstein re: Our meeting of January 10.		X			
313	06/11/04	Fax from Joe Rochelle enclosing a redlined version of the Coal Creek: Proposed Settlement Deal Points.		X			

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
314	07/07/04	Proposed Settlement Deal Points from 7/7/04 Mediation Session. (S. Taylor Ex. 4)	X		
315	12/28/04	Transmittal letter from W. Daley to W. Weinstein attaching letter dated 12/27/2004 with enclosure from W. Daley to S. Powell re request for a Pre-application Review.		X	
316	12/28/04	Email from S. Buckel to Daley Design re Option 6 - revised from WSW.	X		
317	06/27/05	Department of Planning & Community Development Code Compliance File: CG 05-124160SSL - Clearing in Protected Area.		X	
318	01/05/05	Memo from Thomas Mueller re Coal Creek Fisheries Enhancement Project.		X	
319	02/18/05	Letter from M. Paine to W. Daley re Wetland Reporting for 75 Skagit Key.	X		
320	07/13/05	Email string from W. Weinstein to B. Way re TC McLeod.	X		
321	07/23/05	Email string from W. Weinstein to B. Way re Creek and pond enhancement at 73/75 Skagit Key.	X		
322	08/16/06	Letter from W. Way to L. Hiatt with enclosure regarding response to Muckleshoot tribe questions.	X		
323	08/22/05	Email from J. Gough to Berens, Helland, and Paine re: Weinstein clearing (with attached photos).		X	
324	08/23/05	Email from M. Paine to Gough, Berens and Helland re: Weinstein clearing.		X	
325	08/23/05	Email from M. Paine to C. Helland re: Weinstein Monitoring Report.		X	
326	08/23/05	Fax with enclosures from W. Weinstein to D. Bricklin Stop Work Order.		X	

EXHIBIT	DATE	DESCRIPTION	Admissibility Stipulated	Authenticity Stipulated but not Admissible	Objection to Authenticity & Admissibility
327	10/13/05	Letter from H. Mortensen to W. Weinstein re: Wetland Delineation and Stream Location Survey.	X		
328	10/14/05	Email string from W. Weinstein to B. Way re 05-262 - Yonich Site.	X		
329	10/20/05	Email from W. Weinstein to G. Osterback re 05-262 - Yonich Site.	X		
330	10/20/05	Fax from W. Weinstein to B. Way enclosing Findings of Fact, Conclusions of Law and Decision.	X		
331	10/21/05	Email string from W. Weinstein to B. Way re house footprint at 75 Skagit Key.	X		
332	11/29/05	Residential Building Permit Application (75 Skagit Key).	X		
333	12/08/05	Proposed site plan.	X		
334	01/05/06	Letter from W. Chapman to C. Helland regarding CCSP draft EIS.	X		
335	01/24/06	Email string between Michael Payne and J. Gough.		X	
336	02/09/06	Email string from B. Way to W. Weinstein and W. Weinstein to L. Rotramel.	X		
337	03/24/06	Memo from D. Nickels to B. Way and A. Myers.	X		
338	06/02/06	Parcel Development and Natural Areas Enhancement Plan sheets CL1 through CL7 of 7.		X	
339	06/02/06	Coal Creek Salmon Channel Enhancement Plan, sheets CS1 through CS 7 of 7.		X	
340		Pages of the Plans stamped for issuance of building permit for house on 75 Skagit Key and required conditions.		X	

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341	08/16/06	B. Way answers to Muckleshoot questions.	X		
342	02/22/08	Memo from B. Way to B. Weinstein re options and constraints.	X		
343		Wetland Buffer Enhancement Plan		X	
344	03/31/08	Letter from Roger Urbaniak to Greg Johnston re 75 Skagit Key.	X		
345	04/07/08	Letter from Roger Urbaniak to Doug Hatfield and Darren Combs re Incubator Report 2007/8.	X		
346	12/10/08	Draft 75 Skagit Key Discrepancy Report.		X	
347	03/05/09	Letter from Roger Urbaniak to Doug Hatfield re Incubator Report 2008-9.	X		
348	11/20/09	Letter from C. Drews to R. Hill regarding pre-application meeting	X		
349	12/21/09	Email string between C. Drews and R. Hill.	X		
350	02/22/10	Letter from R. Hill to C. Drews.	X		
351	02/22/10	"Salmon Habitat Enhancement Project LUC 20.25H.055 Critical Areas Report."	X		
352	03/26/10	Letter from W. Shiels to M. Paine.	X		
353	05/10/10	Letter from M. Paine with enclosure to B. Shields.	X		
354	06/15/11	Letter from S. Hall to C. Zakrzewski.	X		
355	06/23/10	Voluntary Correction Agreement.	X		

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356	02/24/11	Email from T. Campbell to M. Brennan.		X	
357	06/13/11	Letter from S. Hall to C. Zakrzewski.	X		
358	06/21/11	Letter from C. Zakrzewski to S. Hall.	X		
359	06/27/11	Letter from W. Shiels to M. Paine and T. McFarlane.	X		
360	08/09/11	Letter from W. Shiels to M. Paine with enclosures.	X		
361	08/18/11	Letter from W. Shiels to M. Paine with enclosure.	X		
362	10/05/11	City sign off on the VCA.	X		
363	12/07/09	Photographs taken by Don E. Weitkamp.		X	
364	07/21/05	Photographs produced by William Way.		X	
365	08/19/05	Photographs produced by William Way.		X	
366	11/22/05	Photographs produced by William Way.		X	
367	02/15/06	Photographs produced by William Way.		X	
368	02/22/06	Photographs produced by William Way.		X	
369	05/09/06	Photographs produced by William Way.		X	
370	07/24/07	Photographs produced by William Way.		X	

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			Stipulated	Authenticity Stipulated but not Admissible	Admissibility Objection to Authenticity & Admissibility	Authenticity but not Admissible	Admissibility Objection to Authenticity & Admissibility
371	07/25/07	Photographs produced by William Way.			X		
372	10/30/07	Photographs produced by William Way.			X		
373	12/11/07	Photographs produced by William Way.			X		
374	02/14/08	Photographs produced by William Way.			X		
375	04/03/08	Photographs produced by William Way.			X		
376		Bellevue Land Use Code - partial listing of ordinances re amendments.			X		
377		Bellevue Land Use Code Part 20.25H (in effect in 2002).			X		
378		Bellevue Land Use Code Part 20.30P (in effect in 2002).			X		
379		Bellevue Land Use Code Part 20.25H (in effect in 2006).			X		
380		Bellevue City Code 1.18.050 (in effect in 2008).			X		
381		Bellevue City Code 23.76.035 (current).			X		
382		Bellevue City Code 23.76.150 (current).			X		
383		Bellevue Land Use Code 20.40.450 (in effect in 2008).			X		
384		Bellevue Land Use Code 20.40.450 (in effect in 2002).			X		
385		Bellevue Land Use Code 20.50.032 (in effect in 2008).			X		

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386		Bellevue Land Use Code Definitions (in effect in 2008).		X	
387		LUC 20.10.440 and Bellevue Land Use Code Use Charts (in effect in 2008).		X	
388	11/05/08	Land Use Permit Signature Authority with attachments.		X	
389	06/27/05	Ortho-photo 75 Skagit Key.		X	
390	06/27/05	Ortho-photo 73 Skagit Key, 75 Skagit Key, & Newport Yacht Club D Dock.		X	
391	07/01/05	Ortho-photo 75 Skagit Key.		X	
392	07/01/05	Ortho-photo 73 Skagit Key, 75 Skagit Key, & Newport Yacht Club D Dock.		X	
393	09/02/09	2001 Ortho-photo with Wetland Delineations.		X	
394	12/31/09	2009 Ortho-photo with Wetland Delineations.		X	
395	10/08/08	Landscape Plan by Sterling Landscaping Inc. (75 Skagit Key).	X		
396	01/01/10	Evaluation Salmon Habitat Value Weinstein Property 75 Skagit Key by Don E. Weitkamp Ph.D.		X	
397		Bellevue City Code 1.18.020 Definitions (current).		X	
398		Bellevue Land Use Code 20.10.420.		X	
399		Bellevue Land Use Code Part 20.30K.		X	
400		Bellevue Land Use Code Chapter 1.18.		X	

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401		Bellevue Land Use Code Part 20.30.P.		X			
402		Bellevue Land Use Code Chapter 20.35.		X			